

APPENDIX B TO SUBPART B OF PART 1750
[RESERVED]**PART 1770—EXECUTIVE
COMPENSATION**

Sec.

1770.1 Authority and scope.

1770.2 Purpose.

1770.3 Definitions.

1770.4 Submission requirements.

1770.5 Compliance.

AUTHORITY: 12 U.S.C. 1452(h)(2), 1723a(d)(3)(B), 4501(6), 4502(3), 4502(7), 4513, 4514, 4517, 4518(a), 4631, 4632, 4636, 4641.

SOURCE: 66 FR 47554, Sept. 12, 2001, unless otherwise noted.

§ 1770.1 Authority and scope.

(a) *Authority.* Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (“the Act”) (12 U.S.C. 4501 *et seq.*), established the Office of Federal Housing Enterprise Oversight (“OFHEO”) as an independent office within the Department of Housing and Urban Development. In general, OFHEO is the safety and soundness regulator of two housing-related government sponsored enterprises: the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) (collectively, “the Enterprises”). The supervisory responsibilities of the Director of OFHEO (the “Director”) include oversight of compensation provided by the Enterprises to their executive officers.

(b) *Scope.* The procedures set forth in this part apply to OFHEO’s oversight of executive compensation under the following two statutory mandates:

(1) *Prohibition of excessive compensation.* The Act requires the Director to prohibit an Enterprise from providing compensation to any executive officer that is not reasonable and comparable with that paid by other similar businesses to executives doing similar work, *i.e.*, having similar duties and responsibilities. Businesses used for comparison purposes include publicly held financial institutions or major financial services companies. (12 U.S.C. 4518(a)). To effectuate this compensation oversight responsibility, the Act

provides that the Director has full authority to take such actions as the Director determines are necessary. (12 U.S.C. 4513(8)). However, the Director may not prescribe or set a specific level or range of compensation for executive officers of the Enterprises. (12 U.S.C. 4518(b)).

(2) *Prior approval of termination benefits.* The Enterprises’ enabling statutes (“charter acts”) similarly provide that an Enterprise may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of an executive officer unless the agreement or contract is approved in advance by the Director. The Director may only approve termination benefits that are comparable to benefits provided by other public or private entities involved in financial services and housing interests to executives with comparable duties and responsibilities. Agreements or contracts that provide for termination payments to executives that were entered into before October 28, 1992 are not retroactively subject to approval or disapproval by the Director. However, a renegotiation, amendment or change to such an agreement or contract entered into on or before October 28, 1992 shall be considered as entering into an agreement or contract that is subject to approval by the Director. (Section 309(d)(3)(B); 12 U.S.C. 1723a(d)(3)(B) of Fannie Mae’s Charter Act; Section 303(h)(2); 12 U.S.C. 1452(h)(2) of Freddie Mac’s Corporation Act)

§ 1770.2 Purpose.

In exercising responsibilities related to executive compensation, the Director has established a structured process for the submission of relevant information by each Enterprise. This part codifies those procedures and clarifies the terms used therein in order to facilitate and enhance the efficiency of OFHEO’s oversight.

§ 1770.3 Definitions.

The following definitions apply to the terms used in this part:

(a) *The Act* is Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, Oct. 28, 1992,

Federal Housing Enterprise Oversight

§ 1770.4

106 Stat. 3672, 3941 through 4012 (1993), 12 U.S.C. 4501 *et seq.*, separately entitled the “Federal Housing Enterprises Financial Safety and Soundness Act of 1992.”

(b) *Affiliate* means, except as provided by the Director, any entity that controls, is controlled by, or is under common control with, an Enterprise.

(c) *Charter acts* mean the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, which are codified at 12 U.S.C. 1716 through 1723i and 12 U.S.C. 1451 through 1459, respectively.

(d) *Compensation* means any payment of money or the provision of any other thing of current or potential value in connection with employment. Compensation includes all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any executive officer, including, but not limited to, payments and benefits derived from an employment contract compensation or benefit agreement, fee arrangement, perquisite, stock option plan, post employment benefit or other compensatory arrangement.

(e) *Director* means the Director of OFHEO or his or her designee.

(f) *Enterprise* means the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and, except as provided by the Director, any affiliate thereof.

(g)(1) *Executive officer* means, with respect to an Enterprise:

(i) The chairman of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairman, any executive vice president, and any individual who performs functions similar to such positions whether or not the individual has an official title; and

(ii) Any senior vice president (SVP) or other individual with similar responsibilities, without regard to title:

(A) Who is in charge of a principal business unit, division or function, or

(B) Who reports directly to the Enterprise’s chairman of the board of directors, vice chairman, president or chief operating officer.

(2) The Director shall inform the Enterprises of those officers covered by this definition.

(h) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

§ 1770.4 Submission requirements.

(a) *Submission of information to OFHEO.* All information required to be filed for purposes of this part is to be provided in a timely fashion by each Enterprise to OFHEO’s Associate Director of the Office of Policy Analysis and Research, as specified in this section, or as designated by the Director.

(b) *Categories of information relating to prohibition of excessive compensation.* The following materials, unless otherwise specified, shall be provided by each Enterprise to OFHEO for review within one week after the specified action or event:

(1) Resolutions, including supporting materials and related reports, from meetings of the Enterprise’s committee responsible for compensation when the committee takes any action regarding a compensation matter that under the committee’s authority is effective without further action by the committee or the board of directors;

(2) Resolutions, including supporting materials and related reports (not otherwise provided to OFHEO under paragraph (b)(1) of this section), from meetings of the board of directors relating to executive compensation when the board of directors takes any action regarding a compensation matter that is effective without any further action by the board of directors;

(3) Minutes, including supporting materials and related reports, when adopted by the committee responsible for compensation and those portions of minutes of the board of directors, including supporting materials and related reports, related to compensation matters (except for materials previously provided under paragraphs (b)(1) or (2) of this section);

(4) General benefit plans applicable to executive officers when adopted or amended;

(5) Any study conducted by or on behalf of an Enterprise with respect to compensation of executive officers;